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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

WARREN MYERS AND BILL SUMMERS, plaintiffs in error, v. THE UNITED STATES OF AMERICA. } No. 158.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case comes before the Court upon a writ of error to the United States District Court for the Western District of Missouri, to review a judgment of that court in a case wherein the plaintiffs in error were tried, convicted, and sentenced for contempt. It involves the jurisdiction of the District Court.

The proceeding was begun by an information filed by the United States Attorney in the District Court for the *Western Division* of the Western District of Missouri, which recited that—

> On the 22nd day of July, 1922, in a certain cause pending in the United States District Court for the Western Division of the Western

> District of Missouri, entitled "St. Louis, San Francisco Railway Company, Complainant, v. International Association of Machinists et al., Defendants, In equity No. 372," this Honorable Court issued an injunction against defendants in which injunction it is lawfully ordered that the said defendants in the above entitled cause and all persons engaged in strike formerly employed by complainant—

are enjoined not to picket the buildings or property of the complainant, not to loiter or congregate upon or about its premises, not to interfere in any manner with its employees going to and from their daily work, and not to interfere by violence or threats of violence with any person desiring to become an employee of the complainant. (R. 3–4.)

It is further averred that the defendants were members of one of the orders against which the injunction was directed, that they were striking employees of the complainant, that the injunction had been duly published, that the defendants had actual knowledge of it, and that on July 27, 1922, at Monett, Barry County, Missouri, within the Western District of Missouri, and within the jurisdiction of the court, they had unlawfully, wilfully, knowingly and contemptously committed contempt against the dignity and authority of the court. The acts of contempt consisted in assaulting two of the employees of the Railroad Company, and attempting by force and violence to influence them to leave its employ. (R. 4–5.)

The defendants were forthwith arrested, and were called for trial before the court in the *Western Division* of the District. A jury was impaneled which heard the case and returned a verdict of guilty. By their demurrer and plea to the jurisdiction, filed before trial, and by their motion for a new trial and motion in arrest of judgment, made thereafter (R. 7–10), the defendants challenged the jurisdiction of the court, because the County of Barry, in which the acts constituting the contempt were alleged to have been committed, was within the territorial boundaries of the *Southwestern Division* of the Western District of Missouri and not within the *Western Division* where they were called for trial. (R. 8.)

The assignment of errors filed (R. 11) raises the single question as to whether or not the United States District Court, sitting in the *Western Division* of the Western District of Missouri, has jurisdiction to try and to punish as a contempt the violation of an injunction issued by it in that Division when the acts constituting the contempt were committed in the *Southwestern Division*.

In support of their challenge to the jurisdiction of the trial court the plaintiffs in error urge: (1) That a contempt which may be tried and punished under Sections 21 and 22 of the Clayton Act is a statutory offense, and differs from one punishable under the inherent power of the court; and (2) That such a "statutory contempt" is a criminal offense, comparable in all respects with other crimes, and, under Section 53 of the Judicial Code, may be tried only in

that division of the district in which the acts constituting the contempt were committed.

The argument advanced in support of these propositions is more plausible than sound and seems to rest upon a too narrow view of the statute and the law.

ARGUMENT.

I.

This proceeding to punish for contempt, though it follow the procedure prescribed by the Clayton Act, is none the less an exercise of the inherent power of the court to enforce its decrees.

The power to punish for contempt is an inherent and indispensably necessary power of every court of record. It comes into being the moment the court is created and vested with judicial power. No express grant need be found either in constitution or statute, for wherever judicial power is given there is implied this means of making that power effective. To hear and determine causes, and to make orders, decrees, and judgments affecting the liberty or property of litigants, would be but an idle ceremony, if the power to enforce them were lacking. The process of judicial settlement would soon give way to negotiation and compromise, and the courts degenerate into mere boards of arbitration, if they had not the power to punish those who refuse obedience to their mandates. This is sustained by repeated decisions of this and of the several State courts.

More than a century ago, upon a certificate of division in opinion of the members of the Circuit

Court for Connecticut, whether that court had common-law jurisdiction in libel, this Court, in *United States* v. *Hudson*, 7 Cranch 32 (1812), had occasion to inquire fully into the inherent powers of the Federal Courts. In the course of the opinion Mr. Justice Johnson said (page 34):

> Certain implied powers must necessarily result to our courts of justice, from the nature of their institution. But jurisdiction of crimes against the State is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, etc., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts, no doubt, possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common-law cases, we are of opinion, is not within their implied powers.

A few years later in *Anderson* v. *Dunn*, 6 Wheat. 204 (1821), a case arose involving the power of the House of Representatives to punish for contempt. The decision in this case upon the principal question involved has been greatly modified, if not entirely overruled, by *Kilbourn* v. *Johnson*, 103 U. S. 168, 196–198. The following declaration of Mr. Justice Johnson, however, is still sound. He said, at page 227:

> * * * Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence, and submission to their lawful mandates, and as corollary to

> this proposition, to preserve themselves and their officers from the approach and insults of pollution.

In *Ex Parte Robinson*, 19 Wall. 505 (1873), an attorney at law, in open court, before the United States District Court for the Western District of Arkansas, had been guilty of conduct which that court deemed a contempt. The court ordered as a punishment that his name should be stricken from the roll of attorneys permitted to practice before it. Thereupon Robinson applied to this Court for a writ of mandamus, directed to the District Court, commanding it to restore his name to the roll of members of the Bar. The particular question there raised was whether under the law disbarment might be inflicted upon an attorney as a punishment for contempt, and this Court held that it could not. The case necessitated an inquiry into the nature of the power of the Federal courts to punish a contempt. In the course of the opinion, Mr. Justice Field said, at page 510:

> The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.

In the historic case of *In Re Debs*, 158 U. S. 564, 594, the law relating to contempt was most carefully

considered and exhaustively treated. There this Court said:

> The power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.

The opinion then quotes with approval from two cases decided by the State courts, as follows:

In *Watson* v. *Williams*, 36 Mississippi, 331, 341, it was said:

> The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge It is a power inherent in all courts of record, and coexisting with them by the wise provisions of the common law. A court without the power effectually to protect itself against the assaults of the lawless, or to enforce its orders, judgments, or decrees against the recusant parties before it, would be a disgrace to the legislation and a stigma upon the age which invented it.

And in *Cartwright's Case*, 114 Mass. 230, 238, the court said:

> The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the execution of their powers and to the maintenance of their authority, and is part of the law of the land, within the meaning of the Magna Charta and of the twelfth article of our Declaration of Rights.

The present Chief Justice, when Circuit Judge, in the case of *Thomas* v. *Cincinnati, New Orleans & Texas Pacific Ry. Co.*, 62 Fed. 803, 823, said:

> If orders of the court are not obeyed, the next step is unto anarchy. It is absolutely essential to the administration of justice that courts should have the power to punish contempts, and that they should use it when the enforcement of their orders is flagrantly defied.

The Supreme Court of Indiana, in *Little* v. *State*, 90 Ind. 338, 339, said:

> Among the inherent powers of a court of superior jurisdiction is that of maintaining its dignity, securing obedience to its process and rules, protecting its officers and jurors from indignity and wrong, rebuking interference with the conduct of business, and punishing unseemly behavior. This power is essential to the existence of the court. Without the power to punish for contempt, no others could, as decided in *United States* v. *Hudson*,

> *supra*, be effectively exercised. There is no doubt that the power to punish for contempt is an inherent one, for, independent of legislation, it exists, and has always existed, in the courts of England and America. It is, in truth, impossible to conceive of a superior court as existing without such a power. The legislature may regulate the exercise of this power—may prescribe rules of practice and procedure, but it can neither take it away nor materially impair it.

These cases clearly announce the doctrine, from which we have found no departure in any of the adjudications of this Court, that the power to punish for contempt is inherent and indispensably necessary to every superior court, and that the judicial power to make an order implies the power to enforce it.

It is urged on behalf of the plaintiffs in error, however, that when Congress laid its hand upon this inherent power and legislated upon the subject of contempt, restricting somewhat the scope of the power, defining more clearly its character, prescribing the procedure to be followed or limiting the punishment to be inflicted, it destroyed the unique character of a contempt and transformed it into a "statutory offense" comparable in all respects with other crimes; and, in the instant case, subject to the same provisions as to venue. We find, however, that legislation upon the subject of contempt has not, heretofore, been so construed.

Section 17 of the original Judiciary Act of 1789 (1 Stat. 73, 83) provided:

> That all the said courts of the United States shall have power * * * to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same * * *.

Referring to this clause the Court in *Ex Parte Robinson*, 19 Wall. 505, 512, said:

> The enactment is a limitation upon the manner in which the power shall be exercised * * *.

By Act of March 2, 1831 (4 Stat. 487), Congress legislated further upon the subject of contempt, and in the same case, referring to that Act, this Court said (p. 510);

> But the power has been limited and defined by the Act of Congress of March 2, 1831. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the Circuit and District Courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The Act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases.

The provisions of these two acts of 1789 and 1831 were combined and reenacted in substantially the same words as Section 725 of the Revised Statutes, and later as Section 268 of the Judicial Code (36 Stat. 1163).

In referring to the power defined in Section 725 of the Revised Statutes, this court said in *In re Chiles*, 22 Wall. 157, 168:

> Such has always been the power of the courts both of common law and equity.

And of Section 268 of the Judicial Code it was said in *Toledo Newspaper Company* v. *United States*, 247 U. S. 402, 418–419:

> * * * there can be no doubt that the provision conferred no power not already granted and imposed no limitations not already existing. In other words, it served but to plainly mark the boundaries of the existing authority resulting from and controlled by the grants which the Constitution made and the limitations which it imposed. * * * The provision, therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given by summarily treating such acts as a contempt and punishing accordingly.

In *Middlebrook* v. *State*, 43 Conn. 257, 267, where a statute of Connecticut relating to contempt and prescribing its punishment was under consideration, the court said:

> This is not so much a grant of power as the regulation of the exercise of an existing power.

If these enactments of Congress had been construed to destroy the inherent power of the courts and to substitute therefor a power to punish for a new, different, and wholly statutory crime, one important consequence would have been that trials for such offenses would of necessity be by jury. (*Constitution, Art. III, Sec. 2, Cl. 3; 6th Amendment.*) Yet from 1831 until the passage of the Clayton Act in 1914 no right of trial by jury in cases of contempt was recognized. (*Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564, 594.) Nor is it recognized to-day, excepting in the narrow field of cases in which the Clayton Act specifically provides for it. (*Canoe Creek Coal Co.* v. *Christinson*, 281 Fed. 559.) We have found no indication in any of the opinions of this Court that it considered the Acts of 1789 and 1831 as having any other effect than that of defining and limiting an inherent and existing power of the courts.

Nor do we find anything in the purpose or language of the Clayton Act (Oct. 15, 1914, c. 323, 38 Stat. 730, 737–740) which warrants the conclusion that it created a "statutory" contempt. For some years prior to the passage of that Act the representatives

of organized labor had complained to Congress of what they alleged to be the abuse of equity powers by the Federal courts in awarding under the Sherman Act temporary injunctions without notice against large groups of laborers engaged in controversies with their employers concerning terms or conditions of employment, and in punishing those charged with disobedience without an adjudication of their guilt by anyone other than the judge who granted the injunction. They demanded that Congress curb this power by forbidding the issuance of injunctions without notice and by providing for trial by jury or by another court of those accused of contempt. The answer of Congress to these demands was embodied in the Clayton Act, a supplement to the Sherman Act, which clarified and extended the antitrust laws and made a number of provisions specifically relating to labor disputes.

It provided for restraining orders and preliminary injunctions, and laid down concisely the conditions precedent to the issuance of both. It fixed a brief time limit within which hearing must be had to continue any restraining order. (Sec. 17.) It required the complainant to furnish a bond (Sec. 18) and the court to be specific in the terms of its order (Sec. 19). It forbade the issuance of any order or injunction arising out of a dispute between employer and employee "unless necessary to prevent irreparable injury to property, or to a property right." It legalized an orderly strike, permitted peaceful persuasion of those remaining at work and assemblage of those

on strike, and sanctioned the primary boycott (Sec. 20).

It then provided (Sec. 21) that in a particular class of cases, where there was willful disobedience of any order or decree of the court and the act of disobedience was such "as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed," the procedure to punish such contempt should be as laid down in Section 22, which included a trial by jury "upon demand of the accused."

It made no change whatever in the substantive law. Contempt remained what it had been before. The Act merely prescribed a special procedure in the particular class of cases indicated. We can not find, either in the purpose or the language of Congress, any warrant for the proposition here advanced, that the Act created a "statutory" contempt. The Act is clearly in derogation of the inherent powers of the court, and if it were susceptible of two constructions, which we believe it is not, the same rule should be applied to Section 22 which was applied to Section 20, in *Duplex Co.* v. *Deering*, 254 U. S. 443, 471, where it was said:

> * * * it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the antitrust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corre-

> responding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of the section * * *."

We think it clear that in the instant case the court, although following the procedure prescribed by the Clayton Act, was none the less exercising its inherent power to enforce its orders and decrees.

II.

Section 53 of the Judicial Code which fixes the venue of prosecutions for crimes and offenses does not apply to prosecutions for contempt.

Section 53 of the Judicial Code (36 Stat. 1101) provides, in part, as follows:

> All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district.

The plaintiffs in error point to *Gompers* v. *United States*, 233 U. S. 604, 610, as authority for the proposition that contempt is a crime, and conclude therefrom that the prosecution in this case is governed by the statutory provision just quoted. This reasoning, however, leaves out of account the peculiar characteristics which distinguish contempt from other offenses.

The broad general provisions of a Judicial Code are much like those of the Constitution, of which Mr. Justice Holmes said in *Gompers* v. *United States*, *supra*, that their significance "is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth," and, we may add, by considering the nature of the subject matter which is sought to be brought within them.

That contempt is analogous in many particulars to crime will not be disputed. This Court has so treated it in determining its jurisdiction to review (*Ex parte Kearney*, 7 Wheat. 38; *Hayes* v. *Fischer*, 102 U. S. 121), and in determining that the statute of limitations applicable to crimes shall apply to it (*Gompers* v. *United States*, 233 U. S. 604). But it is equally clear from the decisions that it differs from a crime in particulars which are numerous and important.

Contempts are generally classified as civil and criminal. (*Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441; *In re Nevitt*, 117 Fed. 448.) Even those which are clearly criminal in character, however, differ from ordinary crimes. The following differences appear:

1. Criminal contempts are tried summarily and not after the regular course or manner of trying criminal offenses. (*Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 26.)

2. There is no right of trial by jury, save as specifically provided by statute. Contempts are not "crimes" within the meaning of Article 3, Section 2, Clause 3 of the Constitution, which provides that: "The trial of *all crimes*, except in cases of impeachment, shall be by jury * * *." (*Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564; *McCourtney* v. *United States*, 291 Fed. 497.) Nor are they "*criminal prosecutions*" within the meaning of the Sixth Amendment. (*United States* v. *Zucker*, 161 U. S. 475, 481.)

3. Courts of chancery, probate courts, courts of common pleas, and other courts having no criminal jurisdiction may nevertheless punish for criminal contempt. (*In re Debs*, 158 U. S. 564; *Middlebrook* v. *State*, 43 Conn. 257; *Cartwright's Case*, 114 Mass. 230; *Rapalje on Contempt* (1884), Sec. 3.)

4. For a criminal contempt the defendant may, without a waiver, and without his consent, be sentenced in his absence. (*Ex parte Terry*, 128 U. S. 289; *Middlebrook* v. *State*, 43 Conn. 257.)

5. An act which is a contempt of court and also a crime may be punished summarily and by indictment; and conviction or acquittal in one will not bar the other. Among the immunities found in the Fifth Amendment is this: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Contempt has not been considered as an "*offense*" within the meaning of this provision. (*Chicago Directory Co.* v. *United States Directory Co.*, 123 Fed. 194; *Mer-*

chants' Stock & Grain Co. v. *Board of Trade of Chicago*, 201 Fed. 20; *O'Neil* v. *People*, 113 Ill. App. 195.) It is significant to observe in this connection that Section 25 of the Clayton Act provides: "Nor shall any such proceeding (prosecution for contempt) be a bar to any criminal prosecution for the same act or acts."

6. A defendant is not entitled to be confronted with the witnesses against him in open court. (*Merchants' Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 29.)

7. It is doubtful whether the immunity from self-incrimination afforded by the Fifth Amendment to defendants in "any criminal case" will relieve a defendant in contempt from examination as a witness, so long as he is not required to incriminate himself in any matter other than the contempt inquired into. (*Id.*)

8. Finally, what is of particular importance in the case at bar—the court against which a contempt is committed has exclusive jurisdiction to punish it, and no change of venue can be allowed.

In re Debs, 158 U. S. 564, 595.
Ex parte Bradley, 7 Wall. 364, 372.
Binkley v. *U. S.*, 282 Fed. 244.
McGibbonney v. *Lancaster*, 286 Fed. 129.
Dunham v. *United States*, 289 Fed. 376.
Commonwealth v. *Shecter*, 250 Pa. 282, 290.
Penn v. *Messinger*, 1 Yeates (Pa.) 2.
Passmore Williamson's Case, 26 Pa. 9, 18.
People v. *County Judge*, 27 Cal. 151.
Phillips v. *Welch*, 12 Nev. 158.
Rapalje on Contempt (*1884*), Sec. 13.

Because of these many points of difference between criminal contempts and true crimes, this Court, while recognizing their criminal aspects, has held that contempt proceedings are neither civil nor criminal but are *sui generis*. (*O'Neal* v. *United States*, 190 U. S. 36; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324.) *Gompers* v. *United States*, 233 U. S. 604, relied upon by the plaintiffs-in error, does not overrule the many cases we have cited which distinguished between contempt and crime.

We think that a review of all the cases will sustain the assertion that contempt has never been treated as a crime, nor have the words "crimes" or "offenses" been construed to embrace contempts where the effect of so doing would be to interfere with the inherent power of the courts. In the case of *Gompers* v. *United States*, supra, it was held that by analogy the statute of limitations applicable to crimes should be applied to proceedings for contempt. This could be done, however, without in any manner abridging the inherent power of the courts to hear and to adjudge guilty of contempt those persons who defied its orders. But to construe the statutes which fix the venue of criminal offenses so as to embrace contempts would very seriously curtail the power of the courts to enforce their orders.

While the jurisdiction of the District Court is ordinarily coextensive with the district, there are many instances in which its process runs and its decrees are effective beyond the district. Thus in equity, where the action is *in personam* and the operation of the

decree is upon the conscience of the party, a court has power to require a defendant to do or refrain from doing anything beyond the limits of its territorial jurisdiction which it might require to be done or omitted within the limits of such territory. (Williams on "Jurisdiction and Practice of Federal Courts," Sec. 2, page 24; *Muller* v. *Dows*, 94 U. S. 444.) A court of equity having jurisdiction over the person of a defendant may decree that he convey the title to property situated in a foreign jurisdiction, and the conveyance will pass the title of such defendant. (*Massie* v. *Watts*, 6 Cranch, 148; *Watkins* v. *Holman*, 16 Pet. 25.) In criminal causes the court may validly command the attendance of witnesses from any portion of the United States, and in civil causes, from its own or any other district, within the radius of a hundred miles of the place of trial. Executions upon a judgment for the use of the Government run throughout the United States.

If any of these writs be disobeyed whether within or without the district of the court which issued them, it is a contempt of that court, and that court alone must have the power to hear and determine the contempt if its power is to be effective. "Otherwise the case would present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers itself to take care of its own dignity and punish the offender." (*Ex parte Bradley*, 7 Wall. 364, 372.)

In *New Orleans* v. *Steamship Company*, 20 Wallace, 387, 392, this Court, quoting Mr. Justice Blackstone in Crosby's case, said:

> The sole adjudication for contempt, and the punishment thereof, belongs exclusively and without interfering to each respective court.

In *In re Debs*, 158 U. S. 564, 595, it was said:

> In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency. In the *Case of Yates*, 4 Johns. 314, 369, Chancellor Kent, then Chief Justice of the Supreme Court of the State of New York, said:
>
> "In the *Case of The Earl of Shaftesbury*, 2 St. Trials, 615; S. C. 1, Mod. 144, who was imprisoned by the House of Lords for high contempts committed against it, and brought into the King's Bench, the court held that they had no authority to judge of the contempt, and remanded the prisoner. The court, in that case, seem to have laid down a principle from which they never have departed, and which is essential to the due administration of justice. This principle that every court, at least of the superior kind, in which great confidence is placed, must be *the sole judge*, in the last resort, of contempts arising therein, is more explicitly defined and

> more emphatically enforced in the two subsequent cases of the *Queen* v. *Paty* et al. and of the *King* v. *Crosby*."

In *Penn* v. *Messinger*, 1 Yeates (Pa.), 2, where the judges refused to punish contempt of the process of another court, the court said that it "knew of no case where one court punished a contempt offered to another court."

In *Passmore Williamson's Case*, 26 Pa. 9, 18, it was said that "the authority to deal with an offender of this class belongs exclusively to the court in which the offense is committed; and no other court, not even the highest, can interfere with its exercise."

And in the more recent case of *Commonwealth* v. *Shecter*, 250 Pa. 282, 289, the Supreme Court of Pennsylvania said: "It is settled law that each court is the exclusive judge of contempts committed against its process."

It is obvious that the court which issues process or renders its judgment or decree is immediately interested in its observance, while to other coordinate courts it is of only remote concern. To make one court dependent for the enforcement of its authority upon another would soon destroy the independence and efficiency of all. And, furthermore, that court which has heard a cause and made its judgment or decree, is the one best able to judge when a contempt is purged or what punishment should be inflicted.

In view of the peculiar nature of contempt, we think it clear that a general statutory provision

relating to the venue of ordinary crimes and offenses should not be construed to include contempt and thus render punishment for disobedience beyond the boundaries of the district dependent upon the action of another coordinate court, unless there is some specific language which points unmistakably to such a legislative intent.

The question here raised has been recently considered and decided in favor of the contention now made by the Government in four cases before the Circuit Courts of Appeal for the Fifth and Eighth Circuits.

In *Binkley* v. *United States*, 282 Fed. 244 (C. C. A. 8th Cir.), the District Court for the Eastern District of Arkansas issued an order which amounted to an injunction restraining anyone from interfering with the operation of the Missouri & North Arkansas Railroad Company, whose property was then in the hands of a receiver appointed by that court. Binkley committed acts within the *Western* District of Arkansas, in violation of the order. He was arrested, heard by the District Court for the *Eastern* District and adjudged in contempt. He urged that the court was without jurisdiction because the acts complained of had been committed in the Western District. Both the District Court and the Circuit Court of Appeals, however, sustained the jurisdiction. The latter in its opinion said (p. 246):

> It must be borne in mind that the court of the Eastern District was the court in which the receivership matter was pending. The

offense, if offense at all, was a contempt of the court of the Eastern District, even though the acts constituting the contempt took place in the Western District.

In *McGibbony* v. *Lancaster*, 286 Fed. 129 (C. C. A. 5th Cir.), the District Court for the Western District of Louisiana appointed receivers for the Texas & Pacific Railway Co., and issued an injunction restraining anyone from interfering with their conduct of the roads. It was alleged that the defendant committed acts in the Eastern District of Texas which were in violation of the injunction. He was called for trial in the Western District of Louisiana and challenged the jurisdiction, but it was held that the court which had issued the injunction had jurisdiction to try and to punish the contempt.

In *McCourtney* v. *United States*, 291 Fed. 497 (C. C. A. 8th Cir.), an injunction was issued by the District Court for the Western Division of the Western District of Missouri, under the Clayton Act, to protect the property and business of the Saint Louis-San Francisco Railway Company. The defendant, who was charged with having violated the injunction in the *southern* division of the district, questioned the jurisdiction of the court to try him in the *western* division. Again the jurisdiction of the court which issued the injunction was sustained.

In *Dunham* v. *United States*, 289 Fed. 376 (C C A. 5th Cir.), the defendant was charged with having committed certain acts in the Lake Charles Division of the Western District of Louisiana, in violation of

an injunction issued by the court in the Shreveport Division of the same district. He was tried by the court for the Shreveport Division and contended that it was without jurisdiction. In this, as in the other cases, the jurisdiction of the court whose injunction had been disobeyed was sustained. The Circuit Court of Appeals in its opinion said (p. 378):

> If the place of the trial for a criminal contempt must be in the district where the acts constituting it were committed, then where such acts were committed in a different district than that of the court whose order had been contemned, such court would be powerless to deal punitively with the violation of its injunctive orders, and the trial and punishment of such contempt would have to be by a different court from that whose order had been defied. This would clearly be an alteration of the entire idea of a contempt; and in derogation of the power of a court to deal with violators of its orders. The essential act of contempt is the disrespect shown to the order of the court and the disobedience thereof. In this case that was a disrespect and disobedience of the orders of the court sitting at Shreveport, and was a contempt of the United States District Court at Shreveport, even if the acts evidencing the contempt took place in the Lake Charles division. The court at Shreveport was the court to deal with it.

The latter part of this quotation suggests the theory that a contempt is *actually committed* at the

place where the court which made the order sits, as it is there where the disobedience and defiance of authority take effect, though the acts which evidence them were committed elsewhere. Much might be said in support of this view. (See *Burton* v. *United States*, 202 U. S. 344, 389; *Lamar* v. *United States*, 240 U. S. 60, 66.) But we do not believe that is necessary to rely upon it to sustain the jurisdiction of the trial court in this case, for to us it seems clear that contempts are not embraced within the purview of general statutory provisions fixing the venue for ordinary crimes and offenses, and that Section 53 of the Judicial Code does not apply to such prosecutions.

CONCLUSION.

We respectfully submit that neither the Clayton Act, nor Section 53 of the Judicial Code, deprived the trial court of jurisdiction to hear and determine this case, and that the judgment of the District Court should be affirmed.

Respectfully submitted.

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